IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 782 OF 2007

Shri Omprakash C. Mantri ..Petitioner

Vs.

1. Shri Anup Budgamza and anr. ..Respondents

Mr. M.S. Kamthekar for petitioner.
Mr. R.S. Panday for respondent no.1.
Mr. Y.M. Nakhawa, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 30, 2007.

P.C.:

1. Heard Mr. Kamthekar the learned counsel for the petitioner who is seeking to invoke the inherent powers of this court under Article 227 of the Constitution to quash and set aside the proceedings in Criminal Case No.771/SW/2006.

2. As per the complainant he filed CC No.309/SW/2006 before the Metropolitan Magistrate 29th Court, Dadar, Mumbai on 10/7/2006 and the process was served on the respondent no.1 on 31/7/2006. By

way of counter blast the respondent no.1 filed CC No.771/SW/2006 against the petitioner and in the same, an order of issuance of process was passed by the very same learned Magistrate before whom the petitioner's complaint is also pending. The said order of process came to be challenged in Criminal Revision Application No. 64 of 2007 and the learned Additional Sessions Judge was pleased to dismiss the revision application by his Judgment and Order dated 14/3/2007. Hence, this petition.

3. Whether the respondent no.1 filed the complaint subsequently by way of counter blast, whether he did not suffer any injury, was not hospitalised and whether he filed a false complaint are the issues which will have to be decided on the basis of the evidence that may be adduced before the trial court during the trial of the complaints. The learned Additional Sessions Judge is right in holding that while issuing process the learned Magistrate was required to consider a prima facie triable case and not the veracity of the complaint. Hence there is no reason to cause interference in the order passed by

the learned Additional Sessions Judge.

4. The petition is hereby rejected summarily and it is directed that Criminal Case No. 309/SW/2006 and Criminal Case No. 771/SW/2006 be clubbed and heard together by the 29th court of Metropolitan Magistrate at Dadar, Mumbai.

(B.H. Marlapalle,J.)